In the
Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~774~~ 70-14

DR. JONATHAN O. COLE,
Superintendent, Boston State Hospital
and
DR. MILTON GREENBLATT,
Commissioner, Department of Mental Health,
Commonwealth of Massachusetts
APPELLANTS

v.

LUCRETIA PETEROS RICHARDSON,
APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants, the Superintendent of the Boston State Hospital and the Commissioner of Mental Health of the Commonwealth of Massachusetts, submit this statement pursuant to the provisions of Rule 13 of the Rules of this

Court in support of their contention that this Court has jurisdiction to review the judgments and injunctions of the United States District Court for the District of Massachusetts referred to herein.

Opinions Below

The first opinion of the district court is reported at 300 F.Supp. 1321. The order of this Court vacating the judgment of the district court and remanding the case to the district court is reported at 397 U.S. 238. The second opinion of the district court is unreported. The opinions and judgments of the district court are reproduced as an appendix to this statement.

Jurisdiction

The civil action in the United States District Court for the District of Massachusetts which gives rise to this appeal was commenced by the filing of a complaint seeking an injunction and damages pursuant to 28 U.S.C. §§ 1331 and 1343(3) and 42 U.S.C. § 1983. A three judge court was convened pursuant to 28 U.S.C. §§ 2281 and 2284, and, after hearing, the court declared the oath required of public employees by Massachusetts General Laws, chapter 264, section 14 unconstitutional. The defendants in the district court (appellants here) were enjoined from requiring the oath of the plaintiff as a condition of employment.

Defendants appealed to this Court, *Cole, et al.* v. *Richardson*, No. 679, October Term, 1969, and plaintiff cross-appealed, *Richardson* v. *Cole, et al.*, No. 774, October Term, 1969. Plaintiff suggested to this Court that defendants' appeal was moot, and this Court vacated the judgment of the district court and remanded the case for a determination of mootness.

On remand, the district court determined that the case was not moot and reinstated the judgment and injunction on July 1, 1970. A notice of appeal was filed with the district court on July 31, 1970.

The statutory provision believed to confer jurisdiction of the appeal on this Court is 28 U.S.C. § 1253.

The cases believed to sustain the jurisdiction of this Court are, in the order cited: *Hosack* v. *Smiley*, 276 F.Supp. 876 (D. Colo. 1967), *aff'd* 390 U.S. 744; *Knight* v. *Board of Regents of the University of the State of New York*, 269 F.Supp. 339 (S.D.N.Y. 1967), *aff'd* 390 U.S. 36; *Ohlson* v. *Phillips*, 304 F.Supp. 1152 (D. Colo. 1969), *aff'd*, 397 U.S. 317; *Baggett* v. *Bullitt*, 377 U.S. 360; *Keyishian* v. *Board of Regents of the University of the State of New York*, 385 U.S. 589; *Elfbrandt* v. *Russe'l*, 384 U.S. 11; *Cramp* v. *Board of Public Instruction*, 368 U.S. 278; *American Communicat'ons Association* v. *Douds*, 339 U.S. 382; *Harrison* v. *National Association for the Advancement of Colored People*, 360 U.S. 167; *Railroad Commission of Texas* v. *Pullman Co.*, 312 U.S. 496; *Burford* v. *Sun Oil Co.*, 319 U.S. 315; *Schneider* v. *Smith*, 390 U.S. 17; *United States* v. *Rumely*, 345 U.S. 41.

The Massachusetts statute involved is Massachusetts General Laws, chapter 264, § 14, which provides:

> Every person entering the employ of the commonwealth or any political subdivision thereof, before entering upon the discharge of his duties, shall take and subscribe to, under the pains and penalty of perjury, the following oath or affirmation:—
>
> "I do solemnly swear (or affirm) that I will uphold and defend the Constitution of the United States of America and the Constitution of the Commonwealth of Massachusetts and that I will oppose the overthrow of the government of the United States of America

or of this Commonwealth by force, violence or by any illegal or unconstitutional method."

Such oath or affirmation shall be filed by the subscriber, if he shall be employed by the state, with the secretary of the commonwealth, if an employee of a county, with the county commissioners, and if an employee of a city or town, with the city clerk or the town clerk, as the case may be.

The oath or affirmation prescribed by this section shall not be required of any person who is employed by the commonwealth or a political subdivision thereof as a physician or nurse in a hospital or other health care institution and is a citizen of a foreign country.

The text of the statute is found at page 513 of volume 9 of the Annotated Laws of Massachusetts (The Michie Company, 1968).

Question Presented

Is the oath required of public employees by Massachusetts General Laws, chapter 264, § 14 constitutional?

Statement of the Case

On September 30, 1968, plaintiff, Lucretia Peteros Richardson, commenced work as a research sociologist at the Boston State Hospital where the defendant, Dr. Jonathan O. Cole, is superintendent. The hospital, in turn, is under the control of the Commonwealth's Department of Mental Health, of which the defendant, Dr. Milton Greenblatt, is Commissioner.

On November 15, 1968, plaintiff was asked to subscribe to the oath referred to *supra*. She declined to so subscribe, and on November 25, 1968 she again declined to subscribe to the oath. Her employment was thereupon terminated,

and, on March 21, 1969, plaintiff commenced her civil action in the United States District Court for the District of Massachusetts.

The complaint sought an injunction against enforcement of the statute and damages in the nature of back pay. A three judge court was convened, a stipulation of facts was filed, and the court heard arguments. After hearing, the district court determined that the statute was unconstitutional, and the defendants were enjoined from requiring plaintiff to subscribe to the oath as a condition of employment. Plaintiff's request for back pay was denied.

The defendants appealed to this Court from that portion of the judgment and injunction invalidating the oath and prohibiting them from requiring it as a condition of employment (*Cole, et al.* v. *Richardson*, No. 679, October Term, 1969). The plaintiff appealed from the denial of damages (*Richardson* v. *Cole, et al.*, No. 774, October Term, 1969), and, at the same time, the plaintiff suggested to this Court that defendants' appeal was moot because the particular "job-slot" for which she had been hired had been subsequently filled. The defendants filed an affidavit in opposition to plaintiff's motion to dismiss and/or affirm, and this Court thereupon entered an order vacating the judgment of the district court and remanding the case to the district court for a determination on the question of mootness. 397 U.S. 238.

On remand, plaintiff retracted her suggestion of mootness to the surprise and confusion of both the district court and the defendants. In addition, plaintiff pressed her claim for back pay which the district court had advised it would reconsider. After hearing evidence and arguments of counsel, the district court determined that the case was not moot with respect to the constitutionality of the oath but denied the claim for damages and back pay. The judg-

ment and injunction were reinstated, and this appeal followed.

The Question Is Substantial

The holding of the court below—that the oath required of public employees in Massachusetts contravenes the Constitution of the United States—presents a substantial question requiring plenary consideration by this Court. We submit that the decision below is erroneous in that it failed to recognize that the statute involved, Massachusetts General Laws, chapter 264, section 14, is a valid legislative enactment, designed to exact a reasonable (and minimal) expression of support of the government from persons entering its employ. The court erred because the required oath is neither so broad as to impermissibly infringe upon First Amendment freedoms, nor so vague as to violate the requirements of due process of the Fourteenth Amendment to the Constitution of the United States.

Furthermore, to the extent that the district court based its decision on a characterization of the words of the oath, it is respectfully submitted that the district court erred in two further respects. First, if the district court was confused concerning the official position of the Commonwealth of Massachusetts as to the most reasonable interpretation of the Massachusetts oath, it is submitted that the district court acted improperly in not abstaining from deciding the case on the merits, in order to give the Supreme Judicial Court of Massachusetts an opportunity to give the oath a definitive characterization. Second, if the district court considered the second portion of the Massachusetts oath susceptible of one interpretation consistent with the Federal Constitution and one which was not, the district court acted improperly in not saving the oath by accepting the interpretation which it considered to be constitutionally permissible.

Moreover, if one portion of the oath is constitutional while another is unconstitutional, the district court erred in holding the entire statute unconstitutional, rather than severing any unconstitutional portion.

The opinion below does not make clear how the oath is repugnant to the First Amendment, a conclusion which, in our view, is unwarranted since the oath does not affect plaintiff's freedom of speech. The first portion of the Massachusetts oath is similar to the requirement found in clause 3 of Article VI of the Constitution of the United States which provides that certain elected, executive and judicial officers "shall be bound by Oath or affirmation, to support [the Constitution]."

Moreover, the opinion of the district court ignores the fact that this Court has, on several occasions, affirmed judgments validating similar oaths. See, e.g., *Hosack* v. *Smiley,* 276 F.Supp. 876 (D. Colo. 1967), *aff'd,* 390 U.S. 744; *Knight* v. *Board of Regents of the University of the State of New York,* 269 F.Supp. 339 (S.D.N.Y. 1967), *aff'd,* 390 U.S. 36; *Ohlson* v. *Phillips,* 304 F.Supp. 1152 (D. Colo. 1969), *aff'd,* 397 U.S. 317. In the light of these cases, the decision below—that the oath contravenes the First Amendment—raises a substantial question which must be resolved by this Court.

The district court was chiefly concerned with what it called the "second part" of the oath, i.e., that portion which requires public employees to swear or affirm that they "will oppose the overthrow of the government of the United States of America or of this Commonwealth by force, violence or by any illegal or unconstitutional method." Appellants submit that this portion of the oath violates no part of the First Amendment. The only effect of this portion of the oath is to clarify an aspect of the obligation imposed by the first portion, i.e., to support the Federal and state constitutions. The oath is clearly dis-

tinguishable from the oaths struck down by this Court in *Baggett* v. *Bullitt,* 377 U.S. 360; *Keyishian* v. *Board of Regents of the University of the State of New York,* 385 U.S. 589; *Elfbrandt* v. *Russell,* 384 U.S. 11, and *Cramp* v. *Board of Public Instruction,* 368 U.S. 278. The oaths involved in those cases were so-called negative or non-Communist oaths. All that the oath in the instant case requires is an affirmation of one's recognition and respect for law. Freedom of association is simply not involved.

In focusing on the second portion of the Massachusetts oath, the district court observed that the language thereof was "hopelessly vague." We submit that the language of the oath is plain, straightforward and unequivocal in requiring minimum allegiance to the government by its employees. In *American Communications Association* v. *Douds,* 339 U.S. 382, this Court was confronted with the question whether an affidavit which required a statement that a union officer did "not . . . support any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods" was constitutional. *Id.* at 386. The Court brushed aside the contention that the affidavit was unconstitutionally vague and stated:

> "There is little doubt that imagination can conjure hypothetical cases in which the meaning of these terms will be a nice question. The applicable standard, however, is not one of wholly consistent academic definition of abstract terms. It is, rather, the practical criterion of fair notice to those to whom the statute is directed. The particular context is all important." *Id.* at 412.

Moreover, even when this Court has invalidated oaths or affidavits of non-membership or non-association, it has

clearly indicated that a state may require of prospective employees an affirmation that they do not embrace the aims of an organization which has as one of its purposes the forceful or unlawful overthrow of the government. *Elfbrandt* v. *Russell, supra*, at 15. We submit that if an oath which provides that the subscriber does not embrace the illegal aims of an organization bent on overthrowing the government does not suffer from the vice of vagueness, then it follows that an oath requiring opposition to those same acts is not invalid. The Massachusetts oath does no more than require a dedication legitimately expected of a state employee. Just as a New York teacher was required to discharge, to the best of his ability, his duties as a teacher, a Massachusetts state employee is to discharge his duty to oppose the overthrow of the institution providing not only his salary but his freedom.

The district court seized on the possibility that the oath might be susceptible of two reasonable interpretations, an argument advanced below by the plaintiff. However, that was not sufficient to compel a declaration of unconstitutionality on the ground of vagueness. The vagueness test is much stricter, and is stated as either whether the terms of an oath are "susceptible of objective measurement" or whether the terms are "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Cramp* v. *Board of Public Instruction, supra*, at 286; *Baggett* v. *Bullitt, supra*, at 367. Under those tests, the oath in the instant case withstands attack. If there is any ambiguity in the Massachusetts oath, it is certainly not so severe as to seriously jeopardize the ability of a state employee to conform his conduct to the requirements of the oath.

In each case in which this Court has struck down an oath, the Court has found an infringement of First Amendment freedoms. We believe that the Court has never

squarely faced the question whether vagueness *per se* is sufficient to invalidate a state oath, and if, as we submit, the Massachusetts oath infringes no First Amendment freedoms, there is posed a substantial question whether the oath must be invalidated assuming that this Court agrees with the court below on the question of vagueness. See *Cramp* v. *Board of Public Instruction, supra,* at 286; *Keyishian* v. *Board of Regents, supra,* at 559-560.

In contrast to the oaths struck down by this Court in *Cramp* & *Keyishian,* the Massachusetts oath does not place any limitation on an employee's speech or association. No words or conduct are proscribed: the subscriber is free to criticize the government and its policies and to join any organization he or she pleases. Further, in contrast to the oaths in other cases, the Massachusetts oath requires no affirmative conduct unless and until there is a clear and present danger to the existence of the nation and/or the state.

Finally, we submit that the district court erred in three further respects. If the court was in doubt as to the Commonwealth's interpretation of the oath, it should have abstained from deciding the case on the merits pending a decision of the Supreme Judicial Court of Massachusetts as to the interpretation to be accorded the oath. *Harrison* v. *National Association for the Advancement of Colored People,* 360 U.S. 167, 176-177; *Railroad Commission of Texas* v. *Pullman Co.,* 312 U.S. 496, 501; *Burford* v. *Sun Oil Co.,* 319 U.S. 315, 331, 334. Secondly, if the court below thought the oath susceptible of two interpretations — one constitutional and the other unconstitutional — it acted improperly in not accepting the constitutional interpretation. See *Schneider* v. *Smith,* 390 U.S. 17, 26; *United States* v. *Rumely,* 345 U.S. 41, 46. A reading of the court's opinion indicates that the court considered validating the oath by construing the statute narrowly, a course it should

have followed. Lastly, the court, once it found the second portion of the oath unconstitutional, should have severed the offending portion rather than declaring the entire oath unconstitutional. It is clear that the court found no infirmity in the first portion of the oath, and it should have made that distinction in its judgment and injunction.

Conclusion

The question presented by this appeal is substantial and warrants plenary consideration by this Court. Probable jurisdiction should therefore be noted and the case set down for argument.

Respectfully submitted,

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September 1970

APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 69-302-G

LUCRETIA PETEROS RICHARDSON, *Plaintiff*,

v.

DR. JONATHAN O. COLE, Superintendent, Boston State Hospital, and DR. MILTON GREENBLATT, Commissioner, Department of Mental Health, Commonwealth of Massachusetts, *Defendants*.

Before ALDRICH, *Circuit Judge*,
JULIAN and GARRITY, *District Judges*.

OPINION

June 26, 1969

ALDRICH, *Circuit Judge*. The plaintiff, after six weeks of employment by the Commonwealth of Massachusetts as a research sociologist at the Boston State Hospital, was informed that she would have to take the oath required of all public employees by Mass. G.L. c. 264 § 14. Upon her refusal, on the assertion that the oath was unconstitutional, she was paid for her services to date and told that no further compensation could be made. She then brought the present suit under 28 U.S.C. § 2281, requesting the appointment of a three-judge district court and a declaration of the statute's unconstitutionality. Named respondents are the Superintendent of the hospital and the Commissioner of the Department of Mental Health, but the Commonwealth was properly served and defends through the Attorney General, and for convenience we will refer to the Commonwealth as the respondent. No question of standing is raised.

The statutorily required oath is as follows.

> "I do solemnly swear (or affirm) that I will uphold and defend the Constitution of the United States of America and the Constitution of the Commonwealth of Massachusetts and that I will oppose the overthrow of the government of the United States of America or of this Commonwealth by force, violence or by any illegal or unconstitutional method."

A "violation" of section 14, which presumably means a failure to "live up" to the oath, since its phraseology is in the future tense, is a felony. Mass. G.L. c. 264 § 15.

The oath can be conveniently divided into two parts, the first ending with the word "Massachusetts." Plaintiff makes an esoteric analysis of the phrase "uphold and defend" from which she argues that even this part is improper. We consider this argument foreclosed by *Knight* v. *Board of Regents*, S.D.N.Y., 1967, 269 F. Supp. 339, *aff'd* 390 U.S. 36. While the obligation in *Knight* was to "support" the constitution, traditionally the words "support," "uphold," and "defend" may be regarded as equivalents. *See*, Report of the Attorney General (of Mass.) (1967) pp. 206-07.

Plaintiff takes an equally esoteric word-by-word approach to the second part which, if we were to follow it, would make almost any sentence in the English language ambiguous. A criminal statute is to be strictly interpreted, but this does not mean that common sense is to be jettisoned. In at least one aspect, however, we must agree with plaintiff's position. We find the phrase "oppose the overthrow" fatally vague and unspecific.

The word "oppose" has a number of common meanings, running from the negative, "not favor," or "refrain from," to the affirmative, viz., to take active steps to restrain the conduct of others. Had the statute plainly said the former, we might find it difficult to support the plaintiff's conten-

tion that the First Amendment forbade the state from imposing such restrictions upon its employees. This would involve the question whether what, for the ordinary citizen, may be free speech if the approval of violence is sufficiently benign, *cf. Brandenberg* v. *Ohio,* U.S. (6/10/69) 37 L.W. 4525, may be forbidden to public employees. *Cf. Garner* v. *Board of Public Works of Los Angeles,* 1951, 341 U.S. 116. We might be particularly led to such a restricted meaning of "oppose" by the fact that the statute reads "overthrow" as distinguished from "attempt to overthrow." Obviously if one is speaking in terms of making active opposition to someone else's conduct, it is too late to oppose after there has been an overthrow—the opposition must be to the attempt. On the other hand, if one is speaking of one's personal standards one can favor an overthrow, or not favor it.

However, there is another possible, and in the opinion of at least one member of this court, even more plausible interpretation of the oath. This meaning has, in fact, been embraced by the Commonwealth. In its brief it says,

> "[I]n the event that a clear and present danger arose of the actual overthrow of the government, . . . the public employee [would] be required to use reasonable means at his disposal to attempt to thwart that effort. What he might do in such circumstances could range from the use of physical force to speaking out against the downfall of the government. The kind of response required would be commensurate with the circumstances and with the employee's ability, his training, and the means available to him at the time."

In oral argument the Deputy Assistant Attorney General amplified the Commonwealth's position. There were, he asserted, three standards of obligation to take active steps to "oppose" the overthrow of the government by force or

violence. The ordinary citizen who has taken no oath has an obligation to act *in extremis*; a person who has taken the first part of the present oath would have a somewhat larger obligation, and one who has taken the second part has one still larger.

We need not explore these undefined boundaries. The very fact that such varied standards, as well as the alternative one of purely negative behavior earlier adverted to, can be suggested is enough to condemn the language as hopelessly vague. It is, of course, well settled that employment cannot be conditioned upon an unintelligible oath. *Cf. Connally* v. *General Constr. Co.*, 1926, 269 U.S. 385, 391; *Cramp* v. *Board of Instruction of Orange County*, 1961, 368 U.S. 278, 287.

Plaintiff is entitled to a declaration that the statute is unconstitutional. She is also entitled to the injunction requested, forbidding the defendants from prohibiting her from discharging her duties at the Boston State Hospital insofar as such prohibition is based upon her refusal to take the oath required by Mass. G.L. c. 264(14). We cannot grant her request for back pay.

BAILEY ALDRICH
ANTHONY JULIAN
W. ARTHUR GARRITY JR.

B.D.

JUDGMENT AND INJUNCTION

June 26, 1969

This cause came on to be heard upon the complaint of Lucretia Peteros Richardson. The Court, upon consideration of the complaint, the answer of the defendants, the stipulation of facts, the briefs and arguments of counsel for the plaintiffs and the defendants, and for the reasons stated in its opinion filed herewith,

ORDERS, ADJUDGES and DECREE

a) that section 14 of chapter 264 of the General Laws of Massachusetts violates the First Amendment of the Constitution of the United States and is therefore invalid; and

b) that the defendants be, and they are hereby, permanently enjoined from prohibiting the plaintiff from discharging her duties at the Boston State Hospital insofar as such prohibition is based upon her refusal to take the oath required by said section 14 of chapter 264 of the General Laws of Massachusetts.

BAILEY ALDRICH
ANTHONY JULIAN
W. ARTHUR GARRITY, JR.

DETERMINATION ON THE QUESTION OF MOOTNESS

July 1, 1970

PER CURIAM. Following the order of the Supreme Court of the United States vacating the judgment herein and remanding the case for a determination whether the causes on appeal (Nos. 679 and 774, October Term 1969) have become moot, the court held a hearing and received evidence, including testimony of the plaintiff, and a supplementary stipulation of undisputed facts relating to questions of mootness. At the hearing plaintiff filed a memorandum of law and the attorneys for plaintiff and defendants made oral arguments. Thereafter defendants filed a supplemental brief and plaintiff a reply brief. On the basis of the supplementary stipulation and evidence received, and upon consideration of the arguments and memoranda of law, the court makes the following findings:

Constitutionality of Mass. G.L. c. 264, § 14

1. Plaintiff has retracted her suggestion of mootness made in the Supreme Court, explaining that her motion

there to dismiss appeal No. 679 on the ground of mootness was predicated on a misunderstanding that the filling of the "job slot" of an occupational therapist which she had been occupying precluded her further employment.[1] It is now clear, however, both from Dr. Cole's affidavit filed in the Supreme Court and from the supplementary stipulation filed in this court on April 24, 1970, that the project for which she was originally hired is still on-going and defendants are ready and willing to employ her on a consulting basis.

2. Plaintiff moved from Massachusetts to New York City in September 1969. For approximately one month before leaving she was hired by the defendants as a consultant to be paid at the rate of $15 per consulting session.[2] This is the specific employment opportunity which is still open to her provided she takes the oath required of all state employees by Mass. G.L. c. 264, § 14. Plaintiff is willing to come to Boston on an average of two days per week for the purpose of completing the research project which she started.

Therefore, in our opinion, plaintiff's claim for an injunction forbidding the defendants from barring her reemployment insofar as such prohibition is based upon her refusal to take the oath required by Mass. G.L. c. 264, § 14, is not moot.

Claim for Damages

3. The facts regarding plaintiff's claim for back pay have been clarified by the supplementary stipulation. Con-

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[1] Defendants have continued to maintain that the case is not moot.

[2] Plaintiff was not required to sign the state employee loyalty oath as a condition of this employment, evidently because of defendant Cole's desire to observe this court's opinion dated June 26, 1969. But there has been no waiver of the requirement generally and the original stipulation of the parties, in paragraph 9 of the stipulation of facts filed May 16, 1969, that plaintiff's refusal to take the oath is an absolute bar to her further employment has not been modified.

trary to the allegation in paragraph 6 of the complaint, plaintiff has been compensated in full for work performed up to November 25, 1968, when she was discharged for refusal to subscribe to the loyalty oath. Upon being discharged plaintiff volunteered to work on the project without compensation and did so full time for a period of approximately one month after November 25, 1968 and continued to work on a volunteer basis without pay at about one-third full time from January 27, 1969 until the decision of the district court entered June 26, 1969. For approximately one month following June 26, 1969 plaintiff attempted unsuccessfully to secure her former position at the Boston State Hospital. On August 4, 1969 she resumed work on the project on a consulting basis at the rate of $15 per consulting session and was to work five sessions per week. Four weeks later she moved to New York, where her husband is employed.

4. In early October she submitted a bill to defendants for $300 for services she had rendered as a consultant. Due to the form of the invoice, payment was delayed. Payment has not yet been made but only because the parties desired to preserve the status quo for purposes of this case. Defendants do not resist payment. Defense counsel stated at the hearing and in the last sentence of the supplemental brief for the defendants filed May 18, 1970 that if the bill is resubmitted by plaintiff or her counsel, it will be promptly processed for payment.

5. At the hearing and in a memorandum filed April 27, 1970 and a reply brief filed May 25, 1970 plaintiff claims damages of approximately $5000 for breach of contract of employment, which she testified she expected would last for approximately one year when she commenced working on September 30, 1968. The court will not entertain this claim for two reasons: (a) The complaint seeks damages only for "her uncompensated employment at Boston

State Hospital" and plaintiff never moved to amend the complaint; (b) Plaintiff's testimony at the hearing demonstrated that there is no substance to her belated claim for breach of contract and the court would not allow a motion to amend the complaint if presented. Plaintiff testified that the program which commenced on September 30, 1968 was of indefinite duration and a kind of pilot study, the expansion of which she and defendants hoped would be financed by a grant from a private foundation.

Therefore, in our opinion, plaintiff's claim for damages has become moot.

(s) BAILEY ALDRICH
Circuit Judge
(s) ANTHONY JULIAN
District Judge
(s) W. ARTHUR GARRITY, JR.
District Judge

REINSTATED JUDGMENT AND INJUNCTION

July 1, 1970

This cause came on to be heard for a determination whether the case is moot, judgment entered herein on June 26, 1969 having been vacated by order of the Supreme Court of the United States and the case having been remanded for a determination of mootness, and the court having held an evidentiary hearing and considered the briefs and arguments of counsel and having determined in its opinion filed herewith that the case is not moot,

ORDERS, ADJUDGES and DECREES:

(a) that section 14 of chapter 264 of the General Laws of Massachusetts violates the First Amendment of the Constitution of the United States and is therefore invalid; and

(b) that the defendants be, and they are hereby,

permanently enjoined from prohibiting the plaintiff from discharging her duties at the Boston State Hospital insofar as such prohibition is based upon her refusal to take the oath required by said section 14 of chapter 264 of the General Laws of Massachusetts.

(s) BAILEY ALDRICH
Circuit Judge

(s) ANTHONY JULIAN
District Judge

(s) W. ARTHUR GARRITY, JR.
District Judge